

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 24752 of 2006

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Order:

The petitioner is working as a Driver in the respondent-APSRTC. He was issued a charge sheet alleging that he drove Private Jeep bearing No. PY 01 E 9807 with passengers from Rayachoty to Akkireddypalli on 31.10.1997. Since the petitioner did not submit any explanation, an enquiry was initiated against him. The Enquiry Officer, who conducted the enquiry, submitted his report holding that the charges are proved against the petitioner. Based on the said enquiry report, the petitioner was removed from service by order dated 16.09.1998 of respondent No.1. Assailing the said order of removal, the petitioner preferred appeal and review petition before the appellate and review authorities, which were rejected. Thereupon, he raised an industrial dispute in I.D. No. 288 of 1999 and the Labour Court, by award dated 12.02.2002, directed the respondent-Corporation to reinstate the petitioner into service afresh without any monetary benefits and continuity of service, and further directed the respondent-Corporation to defer two annual increments with cumulative effect after issuing fresh appointment to the petitioner. Assailing the award of the Labour Court, in so far as not granting continuity of service and monetary benefits besides deferring two annual increments with cumulative effect, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The learned counsel for the petitioner submitted that the Labour

Court, having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate and review authorities, ought not to have ordered his reinstatement afresh, but ought to have directed his reinstatement into service with continuity of service and monetary benefits, and it further committed an error in directing withholding of two annual increments with cumulative effect after issuing fresh appointment. He thus, prays to set aside the award of the Labour Court, in so far as it denied continuity of service and monetary benefits and deferring two annual increments with cumulative effect after issuing fresh appointment.

On the other hand, learned Standing Counsel for the respondent-APSRTC submitted that the charges against the petitioner stood proved in the departmental enquiry. The disciplinary authority passed order of removal, which was confirmed by the appellate and review authorities, and though the Labour Court, concurred with the view of the authorities, yet it has taken a lenient view and ordered reinstatement of the petitioner subject to certain conditions without continuity of service and backwages, and the same cannot be said to be illegal and arbitrary, warranting interference by this Court.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**^[1], the apex Court held as follows:

Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the

above judgment, the impugned award of the Labour Court has to be judged.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted on the ground that he drove Private Jeep bearing No. PY 01 E 9807 with passengers from Rayachoty to Akkireddypalli on 31.10.1997 and caused heavy dent to the legitimate revenue of the Corporation. The charge leveled against the petitioner stood proved in the departmental enquiry. Though the Labour Court concurred with the findings of the disciplinary authority and the appellate and review authorities, it however, felt that the punishment awarded by the disciplinary authority, as confirmed by the appellate and review authorities, is harsh and disproportionate to the misconduct, and accordingly, while setting aside the order of removal, directed reinstatement of the petitioner into service afresh without continuity of service and backwages and withholding of two annual increments with cumulative effect after issuing fresh appointment, which cannot be said to be illegal or arbitrary.

Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages. Admittedly, the petitioner in the instant case, was denied continuity of service and backwages, and this apart, upon issuance of fresh appointment orders, his two annual increments were ordered to be withheld with cumulative effect. The law is well settled that backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**^[2]). It is not a case where the punishment of removal passed by the

disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate and review authorities had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate and review authorities, and ordered reinstatement of the petitioner into service afresh on the ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**^[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate and review authority, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted continuity of service and backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order. In that view of the matter, I find no reason whatsoever to interfere with the impugned award of the Labour Court, which in fact, is a benevolent one.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 19.07.2007.
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[\[1\]](#) AIR 2003 SC 3044=2003AIR SCW3872

[\[2\]](#) (2006) 1 SCC 479

[\[3\]](#) (2006) 1 SCC 63